

REMARKS

Claims 89, 130-141, 143-158 and 160-187 are pending. Claims 188-194 are canceled without prejudice or disclaimer in response to the Examiner's objection that these claims are directed to a non-elected invention. Applicants reserve the right to file one or more divisional applications to any canceled subject matter.

Claims 89, 130-141, 143-158 and 159-187 stand rejected. Applicants respectfully request reconsideration of the pending rejections based on the following comments.

Claims Objections

The Examiner has objected to claims 192-194 for depending from a withdrawn claim. Claims 188-194 have been canceled in response to the Examiner's objection that these claims are directed to a non-elected invention, therefore, this objection is moot.

Obviousness-Type Double Patenting Rejections

A. U.S. Patent No. 7,163,929.

The instant claims stand rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-31 of U.S. Patent No. 7,163,929. (Office Action, page 3). Applicants respectfully disagree. However, solely to promote allowance of the application, submitted herewith is an executed Terminal Disclaimer for filing in connection with the above-referenced application. Applicants respectfully point out that the filing of a terminal disclaimer is not an admission of the propriety of the rejection. *See* MPEP § 804.02; *Quad Environmental Technologies Corp. v. Union Sanitary District*, 949 F.2d 870 (Fed Cir. 1991). Applicants point out that, in the caption of the enclosed executed Terminal Disclaimer, the title is incorrect, and should read "Methods and Compositions for Treating Hepatitis C Virus." The balance of the information in the caption, however, including the serial and confirmation numbers, is correct. Applicants respectfully submit that submission of this Terminal Disclaimer places the application in condition for allowance.

B. U.S. Patent Application No. 11/005,472.

The instant claims stand rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 2-17 and 19-75 of U.S. Patent Application No. 11/005,472. (Office Action, page 6).

If provisional obviousness-type double patenting rejections are the only rejections remaining in an earlier filed pending application, the Examiner should withdraw those rejections and permit the earlier-filed application to issue as a patent without a Terminal Disclaimer. MPEP § 804, subsection I.B.

The filing date of the instant application is June 20, 2003. The filing date of U.S. Patent Application No. 11/005,472 is December 6, 2004. Therefore, because the instant application is the earlier-filed application, and only the provisional obviousness-type double patenting rejection remains, Applicants respectfully request that the Examiner withdraw the rejection and allow the instant application to issue as a patent without a Terminal Disclaimer.

CONCLUSION


In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

A fee for an extension of time for a period of two months will be paid via EFS Web. The Commissioner is hereby authorized to charge any other required fee to Jones Day Deposit Account No. 50-3013 (ref. no. 417451-999044).

If the Examiner believes it would be useful to advance prosecution, the Examiner is invited to telephone the undersigned at (858) 314-1200.

Respectfully submitted,

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